WORKMEN'S COMPENSATION IN THE UNITED STATES: A REVIEW

Systematic indemnity for work accidents is a new thing in the United States. So novel to our jurisprudence is the principle of liability without fault, that only two years ago it was declared by a high court of justice to be not "due process of law." The first legislative attempt to apply the principle to industrial injuries was made within the last five years; the earliest extant laws embodying it date only from 1911. But the progress of workmen's compensation has been as rapid as its introduction was late. That the industry, rather than the individual workman, should bear the inevitable hazard of production is demanded by current ideals of social justice. The common-law rules are universally felt to be "neither just, expedient, nor humane."[1] Already, therefore, work accident indemnity on the basis of occupational risks is the declared policy of some twenty states and, as respects its own employees, of the federal government.[2] Rarely has an economico-legal reform of

[1] Former President Roosevelt in the Georgia Day address at the Jamestown Exposition, June 7, 1910, quoted by Professor Pound, 19 *Green Bag* 614.

[2] Statutes have been enacted as follows: Maryland: April 8, 1902, elective coal miners' insurance; April 7, 1910, compulsory coal miners' insurance (unconstitutional); April 15, 1912, permissive insurance; United States: March 30, 1908, compensation for certain classes of federal employees; Montana: March 4, 1909, compulsory coal miners' insurance (unconstitutional); New York: May 23, 1910, permissive compensation; June 25, 1910, compulsory compensation (unconstitutional); Kansas: March 14, 1911, and March 12, 1913, elective compensation; Washington: March 14, 1911, compulsory state insurance; Nevada: March 24, 1911, compulsory compensation; March 15, 1913, elective state insurance; New Jersey: April 4, 1911, elective compensation; California: April 8, 1911, elective compensation; May 9, 1913, compulsory compensation; New Hampshire: April 15, 1911, elective compensation; Wisconsin: May 3, 1911, and June 26, 1913, elective compensation; Illinois: June 10, 1911, and June 28, 1913, elective compensation; Ohio: June 15, 1911, elective state insurance; March 14, 1913, compulsory state insurance; Massachusetts: July 28, 1911, elective compensation; Michigan: March 20, 1912, elective compensation; Rhode Island: April 29, 1912, elective compensation; Arizona: June 8, 1912, compulsory compensation; West Virginia: February 22, 1913, elective state insurance; Oregon: February 25, 1913, elective state insurance; Texas: April 16, 1913, elective compensation; Iowa: April 18, 1913, elective compensation; Nebraska: April 21, 1913, elective compensation; Minnesota: April 24, 1913, elective compensation; Connecticut: May 29, 1913, elective compensation.

similar magnitude been so swiftly achieved. It is true that the railway compensation bill was rejected by Congress, and that some of the chief industrial commonwealths still cling to the outworn remedies of the common law. But it is more significant that legislation of the new type was enacted in seven states during the current year and is now a live issue in New York, Pennsylvania, Indiana, Missouri, Colorado, and South Dakota. Another biennium is likely to see the principle of occupational risks established everywhere outside of the far South.

A social movement at once so rapid, so widespread, and so significant deserves, and has received, a large measure of attention from economists, lawyers, and statesmen. It is not proposed here to recount the causes, or to narrate the course, of this remedial legislation. Rather, the existing laws and the meager record of their operation to date will be examined in the light of the social problem which they seek to solve. If the examination should seem to dwell more upon defects than upon excellences, it should be remembered that the subject is new to this country and that trial and error is the approved method of social advance among English-speaking peoples. Moreover, while many have praised, few have criticized the details of the new legislation.

To anyone acquainted with workingmen's insurance in Europe the most obtrusive feature of the American compensation laws is their exceedingly restricted scope. The federal act is limited to certain classes of public employees. Of the twenty-two state laws, six[1] are confined to enumerated "dangerous trades," ten[2] exclude domestic service and farm labor, and three[3] others exempt small employers. Persons engaged in interstate or foreign commerce are expressly excepted by several of the acts and are practically excluded in any case by the limitations of state jurisdiction.

The most serious of these omissions—railway transportation—falls without the province of state action. Agriculture, domestic service, and the *petite industrie* generally were excluded on grounds

[1] Arizona, Illinois, Kansas, New Hampshire, Oregon, and Washington.

[2] California, Iowa, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, Rhode Island, Texas, and West Virginia.

[3] The conditional abrogation of common-law defenses applies only to employers of five or more persons in Connecticut and Ohio and of four or more in Wisconsin.

of political expediency. No doubt the aggregate number of persons employed in these occupations is very great and the hazard of certain farm operations is considerable. Yet it was in none of these employments that the demand for accident indemnity arose. Throughout this non-capitalistic field, self-employed labor continues dominant. In so far as the wages system obtains, the old personal relationship of employer and employee has not been superseded by the "cash nexus." Such injuries as occur usually are cared for, if not compensated, at the employer's expense. Doubtless these industries also should ultimately be brought within the scheme of accident indemnity. Meanwhile, it is worthy of note that the pressure for their immediate inclusion comes not from the supposed beneficiaries, but from those whose interest it is to maintain a low scale of compensation in the more hazardous employments.

Upon the whole, having regard to their character as pioneer legislation, no great fault could be found with the scope of the present compensation laws were it not for the elective feature which mars so many of them. When the compulsory act of New York was held unconstitutional the advocates of similar legislation elsewhere took counsel of despair. Whence it happens that of the laws now on the statute books but four are compulsory.[1] Two are permissive merely and, of course, wholly futile—*one* employer with thirty-six workmen has accepted the New York act while all with one accord have rejected the Maryland insurance scheme. The remaining sixteen acts are quasi-elective. Nominally these statutes offer a choice to both employer and employee. But if the employer chooses to reject the act he is stripped of some or all of his common-law defenses and left liable for all such injuries as are attributable to his (legal) "fault." In Iowa it is even presumed, until the contrary appears, that a work injury was caused by the employer's negligence. The workman, of course, has no option unless his employer accepts compensation, nor is his option good for much even then since its exercise would most likely cost him his job. It is difficult to see how any court which would uphold such a method of indirect coercion could balk at a frankly compulsory statute.

[1] Arizona, California, Ohio, and Washington.

But if the advantages of the quasi-elective plan are few and doubtful, its limitations are decided. Such an act must be so drawn that the cost will be no greater within than without the scheme, else it will be rejected by most employers. This means a low scale of compensation, on the one hand, and, on the other, a stringent rule of employers' liability. Even so, insurance carriers may, for ends of their own, largely defeat the remedial purpose of the legislation. It is an additional evil that the elective plan establishes unequal justice. Workmen in the same occupation and in the same state who happen to be under different employers are subject to different laws as respects injuries sustained in the course of their employment.[1]

These weaknesses have had abundant illustration in the short history of quasi-elective compensation laws. The California act, during the third half-year of its operation, covered but one-sixth of the work accidents occurring in that state.[2] The Ohio state insurance plan, after eighteen months, had been accepted by no more than 2,000 employers and 120,000 workmen—less than 10 per cent of the industrial population. In Wisconsin somewhat less than one-half of the accidents reported during the second year after the passage of the act were under compensation.[3] The reasons assigned for this comparative failure substantiate what was said above as to the limitations of the elective plan. The California and Wisconsin acts established a relatively liberal scale of benefits at the same time that they preserved the great defense of contributory negligence to employers who rejected compensation. The Ohio state fund encountered fierce competition on the part of casualty underwriters who did not scruple to insure employers outside the act at rates much below cost, if thereby they might discredit the state insurance plan.[4] The argument is only strengthened by the better success of such statutes as those of Massachusetts, Michigan, and New

[1] See *Report of the Employers' Liability and Workmen's Compensation Commission*, Senate Document No. 338, Sixty-second Congress, 2d session, pp. 256 ff., brief of Professor Ernst Freund.

[2] *Statistical Bulletin of the Industrial Accident Board*, January 1 to July 1, 1913, p. 4.

[3] In September, 1913, after the amended act became operative, the percentage was 73.4. It was nearly 80 during the first two weeks of October.

[4] See Downey, *Work Accident Indemnity in Iowa*, pp. 150–52.

Jersey, which combine niggardly benefits with rigorous employers' liability. In Massachusetts, where these two prime inducements are supplemented by exceptionally cheap insurance, about 750,000 workmen were within the protection of the act at the close of the first year. The New Jersey law, which presumes acceptance unless notice of rejection is filed, made an even better showing, barely 6 per cent of the accidents reported being under common law.[1]

Taught by these experiences, California and Ohio have abandoned the elective plan, while Illinois and Wisconsin have adopted the New Jersey expedient of presuming acceptance at the same time that they have made more stringent the liability of employers who reject compensation. The newer laws generally incorporate these latter features. Of sixteen quasi-elective acts, ten presume acceptance and thirteen conditionally abrogate the three notorious defenses of fellow-servant, contributory negligence, and assumption of risk. But even the most denatured elective laws will hardly prove permanently effective unless the scale of benefits is low. If employers find that insurance is cheaper without than within the statute they will not be caught a second time by the mere failure to exercise their option. And adequate compensation is likely to cost more, under the same system of insurance, than common-law liability even with the infamous three defenses removed.

The quasi-elective plan, therefore, is, in large part, responsible for the gravest defect of the existing compensation laws—the miserably inadequate relief afforded by most of them. Fifty per cent of wages after the first two weeks is the usual indemnity for temporary disability.[2] Even this stipend is subject to stated maxima—commonly ten dollars per week—so that it amounts to no more than one-third of the ordinary earnings of highly skilled workmen. Having regard both to the maximum limit and to the "waiting-period," it is probable that, in most states, workmen temporarily

[1] The facts as to the number of employers and employees subject to the several compensation acts were obtained by a questionnaire sent to the proper administrative boards.

[2] California and Wisconsin pay 65 per cent, Ohio 66⅔ per cent, and Texas 60 per cent of wages. Oregon and Washington pay flat monthly pensions which, however, may not in any case exceed 60 per cent of wages. One-half of wages is the rule in sixteen states.

disabled bear at least three-fourths of the wage loss entailed by their disability.[1] The significance of this fact lies wholly in the economic situation of wage-earners. To the business or professional man three weeks' income may be no great matter but to the ordinary working-class family the loss of thirty or forty dollars means serious privation.

Niggardly medical relief still further reduces the benefit to workmen. Seven states[2] make no provision for medical, surgical, or hospital treatment. In four states[3] such provision is made for two weeks, in two,[4] for three weeks, in one,[5] for seven days. In not more than five states[6] can the medical benefit be considered reasonably adequate. Probably few persons not specially familiar with the subject realize the seriousness of this deficiency. In Washington, where injured workmen must pay their own doctor bills, medical and hospital costs absorb nearly the whole indemnity for temporary disabilities and about one-sixth of the nominal compensation for permanent injuries.[7] Under the Wisconsin act, which provides full medical relief, this single item makes up one-third of the amount of all relief.[8] But the evils resulting from injuries received do not end with the immediate hardship inflicted. Curative care is in a peculiar degree preventive of later burdens. Not only does it save expense to the employer by shortening the period of disability; it obviates many an amputation and many a stiffened limb.

[1] The average duration of 1,077 temporary disabilities in Washington was approximately 25 days (*First Annual Report of the Industrial Insurance Department*, p. 283).

In California the average duration of 8,681 such disabilities was 27.8 days (*First Annual Report of the Industrial Accident Board*, pp. 20–21).

Assuming that a similar average would hold good in other states, 50 per cent of wages for the usual compensation period would equal rather less than one-fourth of the wage loss.

[2] Arizona, Kansas, Maryland, New Hampshire, Nevada, New York, and Washington.

[3] Iowa, Massachusetts, New Jersey, and Rhode Island.

[4] Michigan and Nebraska.

[5] Texas.

[6] California, Illinois, Ohio, Oregon, and Wisconsin.

[7] *First Annual Report of the Industrial Insurance Department*, p. 283.

[8] The Employers' Mutual Liability Insurance Company of Wausau, Wis., has paid $110,678.24 for all relief, of which $36,850.69 was for medical aid (*Financial Statement*, September, 1913). The reports of employers carrying their own risk indicate a still higher proportionate expenditure for medical relief.

Economy at this point is more than unjust; it is uneconomical as well. In European countries medical relief has developed *pari passu* with social insurance.[1] American commonwealths might well profit by their example.

It is, however, the more serious injuries that are least adequately indemnified in the United States. Compensation for permanent, total disability ceases at the end of six years in two states,[2] at the end of eight years in seven,[3] and at the end of ten years in four.[4] Only eight acts[5] grant life-pensions in such cases; three[6] even of these ultra-generous laws reduce the stipend of any pensioner who survives a certain period of years, and one[7] limits the relief to *six dollars* a week. A workman totally incapacitated at thirty—and the average age in extra-hazardous employments is scarcely more—has a life expectancy of twenty-five years.[8] Current morality does not countenance suicide at forty and the invalid can hardly be expected to accumulate a competence out of perhaps ten years' half-pay. What, then, is the theory upon which compensation is cut short at the expiration of an arbitrary term?

The widow and orphan receive even less consideration than the invalidated workman. Only Oregon, Washington, and West Virginia grant pensions during the continuance of dependency. Three years' wages in some three hundred weekly instalments is the modal death benefit.[9] It is comparatively a minor matter that the

[1] See Gibbon, *Medical Benefit in Germany and Denmark.*

[2] New Hampshire and Rhode Island; 300 weeks in each case.

[3] Iowa (400 weeks), Kansas (8 years), Minnesota (400 weeks), Nevada (100 months), New Jersey (400 weeks), New York (8 years), Texas (400 weeks).

[4] Connecticut (520 weeks), Massachusetts (500 weeks), Michigan (500 weeks), Wisconsin (65 per cent of weekly wages until 6 years' wages have been paid). Arizona limits the total to $4,000, which comes to about ten years' half-pay.

[5] California, Illinois, Maryland, Nebraska, Ohio, Oregon, Washington, West Virginia.

[6] California (after 240 weeks), Illinois (after 8 years), Nebraska (after 300 weeks).

[7] West Virginia.

[8] Impaired life.

[9] Approximately three years' wages: California, Connecticut, Iowa, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New Hampshire, and Rhode Island; approximately four years' wages: Arizona, Illinois, Nevada, New York, Ohio, Texas, Wisconsin. There are many differences of detail. Iowa,

pension should be inadequate, even while it lasts, to make good the loss of the husband's earnings, but it is a serious thing that the child who was a babe in arms at his father's death should be abandoned at the very door of the public school. And it is a singular aggravation of parsimony that, in most states, the burial expenses must be met out of the survivors' pittance.[1]

Such parsimony is customary, if not justifiable, in public poor relief. But workmen's compensation laws are avowedly based upon the theory that the pecuniary costs of work accidents should be borne by the industry in which the accidents occur. On this principle, the loss incurred, rather than the subsistence minimum, is the proper measure of indemnity. The pecuniary costs of work injuries comprise the expense of burying the dead and caring for the injured, and the actuarial value of the wages lost. No legislation can be considered just which does not adequately cover these items. A reasonable waiting-period and some deduction from full wages are proper in cases of temporary disability to discourage malingering. And the income loss in the case of death is obviously less than earnings by the amount of the breadwinner's personal expenditure. On these grounds a total invalidity pension might reasonably be fixed at three-fourths, and a total dependents' pension at two-thirds, of average earnings. But there is no ethical or economic justification for a maximum limit which deprives the higher-paid employees of compensation proportionate to their wages. Full indemnity to skilled workmen costs no more, in percentage of pay-roll, than the like indemnity to the unskilled. And it is socially undesirable that artisans should have their standard of life reduced, or that their children should be deprived of educational advantages, because of work accidents. There is even less excuse for terminating any pension while invalidity or dependence

Massachusetts, Michigan, and Rhode Island pay 50 per cent of wages for 300 weeks, Nebraska for 350 weeks, Nevada for 100 months. Texas allows 60 per cent of earnings for 360 weeks. In Minnesota and New Jersey the payment ranges from 25 per cent to 60 per cent of wages for 300 weeks, the percentage varying with the number of dependents.

[1] Burial expenses are paid only *when there are no dependents* in fourteen states. Connecticut, Iowa, Nebraska, Nevada, Ohio, Oregon, Washington, and West Virginia allow such expenses in all cases.

continues. Judged by any reasonable standard, then, the American compensation acts, with their long waiting-periods, partial medical relief, low maxima, and meager pensions for limited terms, fall far short of adequacy.

Next to the amount of compensation, workmen are interested in its certainty. Here, also, American legislation is deficient. Eight[1] states require no insurance or other security. In nine[2] states the employer must either insure his liability or satisfy the proper administrative authorities of his pecuniary responsibility. But the latter requirement, as commonly administered, is far from affording complete security; an employer who is solvent when an accident occurs may go into bankruptcy before compensation payments are completed. If self-insurance is to be permitted it should be supplemented by a guaranty fund or by the compulsory purchase of an annuity in every case of continuing payments. This is the plan pursued in Belgium and other European countries, but no American legislature has seen fit to adopt it. Even the state funds are not altogether above suspicion in this particular, for the states do not guarantee the solvency of the funds.

Insurance is not only a guaranty of compensation payments, but it is, as well, a means of distributing the burden of accident indemnity. The theory of occupational risks assumes that the cost will be spread over the whole industry and incorporated in the price of the product. Such shifting can be completely accomplished only through some form of insurance which imposes equal charges for equal hazards throughout a given competitive field. Obviously, it is beyond the power of any single state to give full effect to this principle. In practice, few of the acts under review secure approximate equality even within the jurisdictions to which they apply.

Ohio and Washington obtain uniformity of costs by means of compulsory state insurance; such differences as exist within the same risk class are in the nature of penalties for preventable hazards. In Massachusetts publicity of insurance rates and the

[1] Arizona, California, Kansas, Minnesota, Nebraska, New Jersey, New York, and Rhode Island.

[2] Connecticut, Illinois, Iowa, Maryland, Massachusetts, Michigan, New Hampshire, Texas, and Wisconsin.

prohibition of discrimination have produced nearly the same result.[1] New Jersey and Wisconsin also have enacted anti-discrimination laws, but too recently to justify any conclusion as to the probable result.[2] Elsewhere the prevalence of competitive rate-cutting precludes anything like regularity of insurance charges for similar risks. Under those elective acts which have been rejected by a considerable number of employers, the confusion is worse confounded. This is likely to be the case even in Oregon, Nevada, and West Virginia, which have optional state insurance.

As respects economy of operation—a matter of interest to consumers as well as employers—the advantage appears to lie altogether with compulsory state insurance. In Washington, during the first eighteen months, the total expense of administration was but little more than 11 per cent of the compensation claims paid;[3] in Massachusetts, during 1912, the expense and profits "loading" amounted to 190 per cent of the compensation costs incurred.[4] Doubtless this showing is unduly favorable to the state plan. Premium rates in Massachusetts have been reduced by more than one-fourth since 1912. Moreover, there is a certain catastrophe hazard, and a certain normal increase in compensation cost to be provided for out of the huge sums retained by insurance companies. Yet, when all is said, the fact remains that competitive insurance is extremely wasteful. The mere expense of soliciting business—an item wholly eliminated under the compulsory state system—comes, at the lowest, to $17\frac{1}{2}$ per cent of the premiums

[1] The Massachusetts law does not require that all insurers shall have the same rates but only that each insurer shall adhere to the rates filed with the commissioner of insurance and that no risk shall be insured at a *less* rate than that approved by the commissioner as adequate. In practice all the companies quickly meet the lowest rate filed by any of them. Under this system rates not only are substantially uniform, as among the several insurance companies, but have tended continually downward.

[2] Rates were filed August 1, 1913, in Wisconsin and October 1, 1913, in New Jersey. The rates filed are subject to no approval or regulation, the acts being aimed solely at discrimination. In Wisconsin the several insurance carriers have filed widely different rates on the same risk classes.

[3] *Bulletin No. 4, Industrial Commission of Washington.* The reserves to secure continuing payments are included in the compensation paid to make the figures comparable with those of Massachusetts.

[4] *Fifty-Eighth Annual Report of the Commissioner of Insurance*, Part II, p. vii.

received.[1] Added to which, all the expenses of management are multiplied by the multiplicity of insurers. Whence it rarely, if ever, happens that workmen or their dependents receive as much as one-half of the premiums paid by employers to private insurance carriers. In Washington, if expenses were paid out of premiums, about eighty-nine cents out of every dollar would reach the ultimate beneficiaries.

A comparison of premium rates under the two systems points in the same direction. An average of some ninety risk classes shows that the Ohio state rates are less than one-third of the rates filed in Wisconsin by the conference insurance companies. The two acts are not dissimilar in their scale of benefits; that of Ohio being, if anything, the more liberal. Such a comparison, to be sure, is not altogether fair; administrative expenses in Ohio are borne by the public treasury and the Wisconsin rates, as filed, are subject to certain discounts for superior safety conditions. But the difference is too great to be thus explained away.

The fact appears to be that the stock companies have not based insurance rates upon an actuarial calculation of cost but have charged what the traffic would bear. It is easy to test this statement. If statistical experience were relied on, premium rates under different acts should bear a fairly constant ratio. The facts are grotesquely otherwise. Taking the Wisconsin conference rate as 100 in each case, the Massachusetts conference rate is 19 on boot and shoe factories, 38 on leather glove-makers, 90 on coal docks, 18 on hotels and restaurants, 66 on reinforced concrete construction, and 90 on interurban railways.[2] In Wisconsin the rate on boot and shoe factories is twice that on leather glove factories; in Massachusetts the two are identical. To judge from the Massachusetts manual, reinforced concrete construction is some sixteen times as hazardous as the business of restaurant keeping; in Wisconsin the relative risks are rated as nine to two. Interurban and street railways are rated as eleven to seven in Wisconsin and as one hundred to twenty-two in Massachusetts. These discrepancies are

[1] The percentage of "acquisition expenses" allowed by the Insurance Department of New York and adhered to in Massachusetts.

[2] These comparisons are made on the basis of rates on file September 30, 1913

the more remarkable because they occur in the official manuals of the same insurers under laws which were enacted in the same year. It cannot be pretended that the *relative* hazards of industries are widely different in the two states. If the above rates are fair, relatively to each other, in Massachusetts, they are grossly discriminatory in Wisconsin, and vice versa. Nor can it be said that such discriminations are inadvertent; if it were a case of mistake or of inadequate experience, the same classes would be overcharged in both states. Systematic discrimination, indeed, appears to be a normal feature of unregulated competitive insurance.

Intentional discrimination apart, it is impossible in the present state of inexperience to compute just rates for compensation insurance. For some years to come all rate-making in this field must be largely conjectural. Here, again, the stock companies are at a disadvantage. At most they can rectify future, not past, premiums. Under either the state or the mutual plan, on the contrary, even past inequalities can be corrected in subsequent assessments.[1]

A priori, there is much reason to believe that compulsory mutual insurance, after the German model, would prove as economical, and as free from discrimination, as the compulsory state system. An employers' association would certainly be less open to political influence and more strict in the rejection of unfounded claims than the most conscientious of state departments. Unfortunately, this plan has not been tried in the United States. The claims of its advocates, however, derive much support from the very creditable record of the voluntary mutuals. One such organization[2] in Wisconsin has paid $110,000 in compensation claims at a total expense of $55,000—a striking reversal of the stock companies' ratio between these two items. The smaller expense loading is reflected

[1] The Washington state rates have proved excessive throughout but in very different degrees. Assessments have, accordingly, been scaled down or omitted altogether according to requirements. In nine of the forty-eight classes there have been but three monthly assessments in eighteen months—i.e., the premiums collected have been only one-sixth of those allowed by law (*Bulletin No. 4, Industrial Insurance Commission of Washington*).

[2] *Financial Statement* of the Employers' Mutual Liability Insurance Company, Wausau, Wis., September, 1913. The Massachusetts Employers' Insurance Association reports a total expense ratio of 16½ per cent to earned premiums—about 4 per cent less than the Wisconsin Mutual (*First Annual Statement*, July 1 to December 31, 1912, p. 11).

in lower rates. The Master Plumbers of Milwaukee insure their members for 1 per cent of pay-roll instead of the 2½ per cent charged by the conference companies; the laundrymen's inter-insurance rate is $1.25 per $100 of pay-roll as against the stock-company rate of $3.36. In Massachusetts, also, the competition of the strong Employers' Insurance Association has been a potent factor in securing cheap insurance for the employers of that state.[1] But neither the state nor the mutual system can attain its full efficiency unless it is exclusive and compulsory. So long as the state fund or the mutual company has to compete with private insurance carriers it will be forced to indulge in many of the wastes of competition—advertising, solicitors' salaries or commissions, duplicate inspection service, and the like. By the same token, it will have to forego the economies incident to the maximum volume of business and it will be handicapped in its efforts to enforce safety standards.

Whatever the form of insurance, strong administrative control is indispensable to protect the rights of workmen. Allow but a pretext for taking compensation cases into court, and claimants will be at the mercy of the claim adjuster. Not that litigation will often be resorted to: the mere threat of it will enable the shrewd adjuster to effect many an unconscionable settlement. Even the requirement that settlements be approved by a court of *nisi prius* is insufficient. Judges are unfitted by their very training for the performance of ministerial duties, nor can they devote much time to such matters without neglect of their primary functions. Despite these obvious considerations, reinforced though they are by abundant experience, eight[2] states make no other provision than court procedure for the

[1] The average rate on sixty-two risk classes accepted by the association is 44 per cent of the Wisconsin conference rate; the average rate on nineteen classes *not* accepted by the association is 60 per cent of the same base. When the workmen's compensation act went into effect the association's rates, on most classes, were about one-half of the stock-company rates. The latter have repeatedly been reduced to meet the association's competition. The writer has in his possession a stock-company manual, dated June, 1912, with pen-and-ink corrections to September, 1913. Some rates have been cut four or five times, the final rate being, in particular instances, less than one-third of the original.

[2] Arizona, Connecticut, Kansas, Minnesota, Nebraska, New Jersey, New York' and Rhode Island. Preliminary arbitration is optional in Arizona, Nebraska, and New York, and obligatory in Kansas. Connecticut provides for special compensation commissioners to assist the courts.

administration of their compensation laws. Even the elementary matter of statistical records was overlooked in several of these commonwealths, in so much that it is impossible to ascertain how many or what employers or employees are subject to compensation, how much indemnity is paid for any class of injuries, how muhc employers expend for compensation or insurance, or what effects might reasonably be anticipated from any proposed amendment to the existing law. Most of the remaining compensation acts create administrative boards[1] *ad hoc*, vested with rather wide powers and subject to court review only on the grounds of fraud, want of jurisdiction, or insufficiency of the facts found to support the award. Such boards have it in their power to minimize the wastes of litigation. But accident indemnity is no isolated problem. On the contrary, it stands in the closest relations with accident prevention and with all measures looking to the health, safety, and comfort of industrial wage-workers. Yet, in most states, these cognate subjects are divided among two or more boards or bureaus with overlapping jurisdiction. It is no unusual spectacle to find an industrial accident board, a labor bureau, a mine inspection department, and a minimum-wage commission striving to administer so many fragments of labor legislation. In only three states[2] are the safety statutes administered by the same body as the compensation act, and only in Ohio and Wisconsin is all labor law brought within the purview of a single commission.

It is particularly unfortunate that so few of the commonwealths have seen fit to correlate accident prevention with accident relief. Those who know the subject at first hand agree that a principal reason for the appalling frequency of industrial injuries in the United States has been the want of sufficient pecuniary pressure upon employers to adopt preventive measures.[3] Systematic

[1] California, Illinois, Massachusetts, Michigan, and Texas have industrial accident boards, Iowa an industrial commissioner, Oregon an industrial accident commission, and Washington an industrial insurance department (of three members), each *ad hoc*. Nevada has an Industrial Commission composed of the governor, attorney-general, mine inspector, and two appointed commissioners. The New Hampshire act is administered by the commissioner of labor, and that of West Virginia, singularly enough, by the Public Service Commission.

[2] California, Ohio, Wisconsin.

[3] See Eastman, *Work Accidents and the Law;* Shearman and Redfield, *Law of Negligence*, 5th ed., p. viii.

indemnity supplies the needed incentive. It can now be clearly brought home to employers that prevention is cheaper than compensation. That the lesson may be well learned, however, the means of prevention must be pointed out. To this end the Industrial Commission of Wisconsin has conducted a safety propaganda, supervised by a well-known safety expert,[1] and supplemented by the regular visits of trained factory inspectors. By such means the number of serious machine accidents was reduced by more than one-fourth within a year's time. No such results could have been achieved by the divided efforts of several distinct departments.

The pecuniary argument for accident prevention is most effectively put in the "merit rating" of compensation insurance. "Merit" or "schedule" rating, in this field, is far from having attained either precision or uniformity.[2] All the systems, however, involve the fixing of a basic rate for standard establishments in each risk class with stated additions or deductions for specific conditions affecting the degree of hazard.[3] Properly worked out, the plan makes possible a direct comparison between the cost of given preventive measures and the resultant saving in insurance premiums. Safety becomes emphatically a business proposition.

"Merit" rating hitherto has not been widely used in this country. Its effectual application, indeed, presupposes some administrative control of insurance charges, such as obtains in very few of the United States. Even where the requisite machinery exists, it is, of course, too early for more than tentative beginnings in this direction. The experiments already in progress exhibit a rough gradation from the flat rate which takes no account of differences between establishments in the same industrial group to a schedule of specific credits and demerits. The Washington state fund exemplifies the method in its lowest stage of development. Rates are uniform within each class, the sole exception being that an employer who maintains abnormally hazardous conditions may be

[1] Mr. C. W. Price, formerly with the International Harvester Company.

[2] The idea appears to have been borrowed from fire underwriting as to which "schedule" rating has long been the practice.

[3] The standard is sometimes the ideally perfect plant (Ohio Industrial Commission), sometimes the model or normal establishment (Prudential Casualty Company), sometimes the worst insurable risk (conference casualty companies).

assigned to a higher risk class than that of the industry in which he is engaged. Even this power is rarely exercised.[1] In Massachusetts, departures from the regular tariff may be made by either "special" or "schedule" rating. A special rate applies only to a particular establishment and requires the approval of the insurance commissioner in each case. The schedule plan is of general applicability and permits certain discounts for specified physical conditions.[2] In Ohio merit rating is universally applied. Those establishments which report not more than ten disabling accidents for each one hundred thousand dollars of pay-roll take the lowest rates in their respective classes. This basic premium is increased by 3 per cent for each additional accident and by a further 20 per cent plus twenty-five dollars for each death or permanent total disability.[3] This method is simple, uniform, and comprehensive but appears to be faulty in principle. Whereas the accident experience of a very large establishment may be a fairly trustworthy *indicium* of hazard, the experience of a small plant affords no sufficient basis for the determination of relative risk. As applied to the smaller business units, the Ohio plan violates the very principle of averages which underlies all insurance. In effect, it obliges each employer to bear his own losses. A sounder method is proposed for the California state fund,[4] though, since membership in the fund is optional, the scheme can have only a limited application at best. Upon the whole, the Wisconsin experiment holds out the best promise of large results. Schedule rating upon an inspectional basis is already the rule in this state. To be sure, the half-dozen schedules in use differ rather widely from each other; all are crude and some appear to be little more than clumsy masks for discrimination. None the less, with the system of checks devised by the Industrial Commission, honest rating will, in due time, be enforced

[1] Letter from the Industrial Insurance Commission, October 9, 1913.

[2] See the *Specific Discount Rate Certificate* of the Massachusetts Insurance Department, Workmen's Compensation Bureau, and the *Merit Rating Circular* of the Massachusetts Employees' Insurance Association.

Only one hundred special rates have been approved in fifteen months' time (letter from Insurance Commissioner Frank H. Hardison, October 10, 1913).

[3] *Manual of Rules and Rates*, November 1912, pp. xxxvi, xxxvii.

[4] See *A Proposed Schedule of Risk Rating*, issued by the Industrial Accident Board.

and uniformity is likely to come as soon as standards shall have been defined by actuarial experience.

There is some pretense at merit rating even in states where each insurance carrier is a law unto itself,[1] but in these states competitive rate-cutting prevents any real enforcement of safety standards. So long as the employer's premium depends mainly upon his bargaining ability he has little incentive to spend good money for accident prevention. And this, unfortunately, is the situation under a majority of the existing compensation acts.[2]

The foregoing review has revealed little cause for complacency on the subject of workmen's compensation in the United States. The laws thus far enacted cover but a fraction of the industrial population. Within the score of commonwealths to which it is confined, the new legislation is defective in scope, illiberal in the scale of indemnity, commonly deficient in administrative machinery, unduly expensive in proportion to the benefits conferred, and, for the most part, comparatively ineffectual for the prevention of industrial injuries. It is not to the credit of the wealthiest of nations that, having been the last to provide systematic relief for work accidents, it should also be the least generous in the provision so tardily made. Still less is it creditable to American statesmanship that the rich experience of Europe should have been so little utilized, or that the very defects of the British workmen's compensation act should have commended it as the principal model for this country.

Yet, with all its imperfections, the accident indemnity legislation of the United States is a notable achievement—praiseworthy by contrast with what has gone before, however poor in comparison with what has been done elsewhere. The movement for workingmen's insurance has only begun, but it is much that a beginning has been made. No state is likely to abandon the principle of com-

[1] The schedule put out by the Workmen's Compensation Service Bureau (conference companies), e.g., is of general application.

[2] A non-conference company writes in reply to inquiry: "As a matter of fact manuals are of little use in the state of Illinois because the companies are rating business on what they term the 'merit system.' " A later letter states: "We have no merit rating system in the state of Illinois." From which it can only be inferred that rates are governed by willingness to pay.

pensation. On the contrary, that principle bids fair to find universal acceptance within another decade. It may reasonably be expected, too, that the existing laws will be perfected by successive amendments—a process already well under way.[1] The clumsy device of quasi-election will be superseded by constitutional amendment or by a more rational interpretation of "due process of law." Employments now excluded will be brought within the statutes. The scale of benefits will gradually be raised to a reasonable standard. Administrative defects will be remedied and means will be found to effect a just and economical distribution of the pecuniary burden. Such, at least, has been the course of similar legislation in European countries. Meanwhile, the very diversity of the present laws is no unmixed evil. When a problem is to be solved experimentally there is safety in a multitude of experiments. Wisdom is not confined to Europe nor have all questions of social insurance been settled in the Old World. Who shall say that America has no contributions to make in this field or that social insurance may not here assume new forms, better adapted than any now extant to our peculiar circumstances? Viewed, therefore, as an earnest of things hoped for, the progress already made on this side of the Atlantic is full of encouragement.

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[1] Of the nine laws enacted in 1911, seven were radically amended in 1913; two were made compulsory, one was greatly enlarged in scope, one was provided with administrative machinery; two became more coercive in character; three made ampler provision for permanent disabilities; all were improved in matters of detail.